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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,297	03/26/2004	Subhash P. Vernekar	03108/0201079-US0	8271

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EXAMINER

WOODWARD, ANA LUCRECIA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 05/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,297

Applicant(s)

VERNEKAR ET AL.

Examiner

Ana L. Woodward

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10/20/2004, 11/09/2004
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) I-II is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) I-II is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/20/04, 11/09/04
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 6, it is unclear if or how the narrower limitation “such as carboxyl” limits the antecedently recited “functional group”.

In claim 1, lines 7-8, it is unclear how a, b, d and e can be “a combination” of hydrogen and alkyl.

In claim 1, lines 8, 14 and 17, it is unclear as to whether or not the “alkyl” is referring to the antecedently recited alkyl group of 1-4 carbon atoms.

In claim 1, line 12, “CF₃-C-CF₃” is indefinite in that the center carbon does not have four valences.

In claim 1, lines 12-15, the language “c is a functional group.....carboxyl and halogen” is redundant and does not further limit formula 3.

In claim 1, lines 15-17, the language with respect to a, b and d in formula 4 being a functional group conflicts with the language per lines 7-8 which recites said groups as either hydrogen or an alkyl.

In claim 1, lines 15-17, the language with respect to c in formula 4 being either hydrogen or an alkyl group conflicts with the language per line 6 that recites c as a “functional group”.

In claim 1, last line, it is unclear what “a mixture” means.

In claim 2, line 1, polyolefin “polymer” does not have express antecedent basis.

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In claim 2, "5,00,00" is indefinite.

In claims 3 and 4, line 1, the recitation of the "aliphatic mono-olefin" (the monomer) as opposed to the "polyolefin" (the polymer) is confusing.

In claim 5, the language "is taken along" is indefinite as to scope and meaning.

In claim 5, the metes and bounds of the "one or more ethylenically unsaturated comonomers" are indefinite. As presently recited, they read on the antecedently recited aliphatic olefin.

In claim 6 the use of the term "comonomer" with respect to the aliphatic olefin is confusing. In this regard, it is noted that "comonomer" in claim 5 refers to only the "ethylenically unsaturated comonomers" and not to the aliphatic olefin. In any event, it is not seen how the recitation of claim 6 further limits the subject matter of claim 5.

In claim 7, it is unclear as to what is meant by "the comonomer in copolymer.....of olefin".

Claim Rejections - 35 USC § 102/103

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1 and 8-11 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over DE 1935239.

DE '239 discloses a process for the preparation of stable crystalline polyolefin polymers which comprises blending a polyolefin, reading on the presently claimed aliphatic polyolefin, with 0.01 to 10 weight percent of an aromatic carboxylic acid imide as a nucleating agent, reading on the presently claimed imide component. The mixtures are extruded at temperatures inclusive of 180°C.

The disclosure of the reference meets the requirements of the present claims both in terms of the types of materials added and their contents. The onus is shifted to applicants to establish that the process of the present claims is not the same as or obvious from that set forth by the reference.

Claim Rejections - 35 USC § 103

5. Claims 2-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 1935239, described hereinabove further in view of U.S. 6,096,811 (Amos et al).

Pending translation of DE '239, it is unclear as to whether or not the polyolefins used therein have molecular weights of 30,000 to 5,000,000. It is maintained that it would have been within the purview of one having ordinary skill in the art to have utilized a conventional polyolefin governed by a molecular weight falling within the scope of the present claims with the reasonable expectation of success.

As to the further copolymer per claim 5, it is maintained that no difference is seen between said copolymer, which reads on a homopolymer, and the olefin polymers of the DE '239 reference. Accordingly, it would have been obvious to one having ordinary skill in the art

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to have employed a mixture of polyolefins for their expected additive effect. In this regard, it is known that mixtures of polyolefin homopolymers and olefin copolymers can be used as the polyolefin component modified with imide nucleating agents (per Amos et al).

6. Claims 1-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. 5,494,948 (Nishio et al) further in view of U.S. 6,096,811 (Amos et al).

Nishio et al disclose propylene resin compositions comprising crystalline polypropylene, reading on the presently claimed aliphatic polyolefin, mica and a bismaleimide compound, reading on the presently claimed imide nucleating agent. The polypropylene, having a melt index of from 0.5 to 150 g/10 min, is reasonably believed to meet the molecular weight per claim 2 (column 2, lines 14-16). The proportion of bismaleimide ranges from 0.01 to 2.0 parts by weight per 100 parts by weight of polyolefin and mica. The exemplified m-phenylenebismaleimide meets the presently claimed formula 1 as defined when A is a double bond and c is an imide functional group. The compositions are preferably mixed in an extruder at a temperature of from 210°C to 290°C (column 3).

In essence, the disclosure of the reference differs from the present claims in not expressly exemplifying the use of an extrusion temperature of 170°C to 210°C. It is maintained that it would have been within the purview of the reference and obvious to one having ordinary skill in the art to have used an extrusion temperature of, for example, 210°C with the reasonable expectation of success. Accordingly, absent evidence of unusual or unexpected results, no patentability can be seen in the presently claimed subject matter.

As to the further copolymer per claim 5, it is maintained that no difference is seen between said copolymer, which reads on a homopolymer, and the olefin polymers of Nishio et al.

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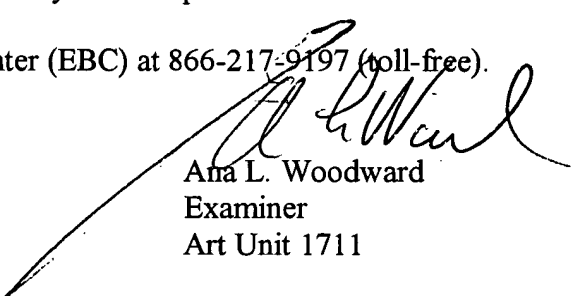
Accordingly, it would have been obvious to one having ordinary skill in the art to have employed a mixture of polyolefins for their expected additive effect. In this regard, it is known that mixtures of polyolefin homopolymers and olefin copolymers can be used as the polyolefin component modified with imide nucleating agents (per Amos et al).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana L. Woodward whose telephone number is (571) 272-1082. The examiner can normally be reached on Monday-Friday (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on (571) 272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ana L. Woodward
Examiner
Art Unit 1711

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